

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

In the Matter of

**2005/2006 U.S.-CHINA AIR SERVICES
CASE AND DESIGNATIONS**

Docket OST-2004-19077

**MOTION TO COMPEL AND MOTION TO SHORTEN ANSWER PERIOD OF
FEDERAL EXPRESS CORPORATION**

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September 17, 2004

**Note: Due to the expedited procedural timetable, FedEx Express requests that
answers to this motion be filed no later than Tuesday, September 21, 2004.**

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Federal Express Corporation (“FedEx Express”), pursuant to 14 C.F.R. § 302.11, hereby moves the Department for an order compelling Northwest Airlines, Inc. (“Northwest”), United Airlines, Inc. (“United”), and United Parcel Services, Inc. (“UPS”) to fully and completely respond to the Information Request included in the Department’s Order Instituting Proceeding and Inviting Applications (“Instituting Order”)¹ at pages 2-3 of the Appendix. Considering the procedural schedule in this case, FedEx Express respectfully requests that the Department consider this motion on an expedited basis, shorten the ordinary time period for filing answers provided for in 14 C.F.R. § 302.6(d) from seven (7) days to one (1) business day,² and require Northwest, United and UPS to fully and completely respond to the Information Request by no later than September 28, 2004.

¹ Order 2004-9-5, Docket OST-2004-19077 (September 3, 2004).

² FedEx Express will contact all parties listed on the attached service list to inquire whether they oppose the motion to shorten the answer period and will report the results to the Department.

In support of its motion, FedEx Express states as follows:

1. The Department propounded the following Information Request upon all incumbent carriers in the U.S.-China market, FedEx Express, Northwest, United and UPS:

For each month of the twelve months ended June 2004 provide the number of flights and **complete itinerary** for all **flights** operated in each city-pair market where service was provided in the U.S.-China market, and the type of aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish between flights operated under code-share arrangements and those that are not operated under code-share arrangements.³

2. The obvious purpose of the Information Request is to enable the Department and the applicant-parties to analyze the level of U.S.-carrier service in the overall U.S.-China market, and the level and quality of service that each incumbent has provided.

3. In its Erratum, the Department clarified that the incumbent carriers' responses to the Information Request were due on September 10, 2004.⁴

4. FedEx Express fully and completely responded to the Information Request on September 10, 2004.⁵

³ *Id.* at Appendix, 2-3 (emphasis added).

⁴ Erratum, Order 2004-9-5, OST-2004-19077 (September 9, 2004).

⁵ See Response of Federal Express Corporation to Information Request, OST-2004-19077-8 (September 10, 2004).

5. However, Northwest's, United's and UPS' responses are inadequate because they fail to provide the "complete itinerary" of the relevant flights.⁶

6. Unlike FedEx Express', Northwest's, United's, and UPS' responses fail to provide the departure and arrival times of the subject flights. The departure and arrival times of a flight are necessarily part of the information included in a flight's "complete itinerary" as that term is commonly understood. As Northwest, United and UPS are certainly well aware, departure and arrival times are relevant to the level and quality of service provided in the air-transport market and are necessary for the Department and the applicant-carriers to properly evaluate the level and quality of service. Therefore, Northwest, United and UPS should be required to provide the departure and arrival times for the subject flights.

7. UPS' response is deficient in other aspects as well. UPS fails to provide the days of operation for the subject flights. Again, days of operation are clearly part of the information included in a flight's "complete itinerary," are relevant to the level and quality of service provided in the all-cargo market, and are necessary for the Department and the applicant-carriers to properly evaluate the level and quality of service. Therefore, UPS should be required to provide the days of operation for the subject flights.

⁶ See Information Response of United Airlines, Inc., OST-2004-19077-5 (September 10, 2004), UPS Information Response to Order 2004-9-5, OST-2004-19077-6 (September 10, 2004), and Information Responses of Northwest Airlines, Inc., OST-2004-19077-7 (September 10, 2004).

8. Finally, UPS' response is deficient because, rather than identifying the requested "flights" by flight number and complete routing, it provides a list of city-pairs and indicates how often each city-pair is served on a month-by-month basis. Although one could hazard a guess as to how this disjointed list of city-pairs could be connected into "flights," it is impossible for the Department or the applicant-carriers to determine with any certainty how all of the various city-pair segments are connected. Again, a "complete itinerary" of a flight would necessarily include its flight number and its complete routing, not a disconnected list of individual city-pair segments. Furthermore, it is unreasonably and unnecessarily burdensome for the Department and the applicant-carriers to be forced to piece UPS' list of city-pair segments together. Therefore, UPS should be required to provide the information requested in a format that depicts each flight's complete routing by flight number.

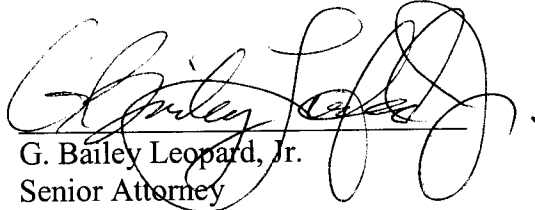
CONCLUSION

FedEx Express moves the Department for an order compelling Northwest, United and UPS to fully and completely respond to the subject Information Request by providing the complete itinerary for the subject flights, including the flight number, each flight's complete routing, each flight's day(s) of operation, and each flight's departure and arrival times. Because of the deadlines imposed by the procedural schedule in this case, FedEx Express respectfully requests that the Department consider this motion on an expedited basis, shorten the ordinary time period for filing answers provided for in 14 C.F.R. §

302.6(d) from seven (7) days to one (1) business day, and require Northwest, United and UPS to comply with the requested order by no later than September 28, 2004.

Respectfully Submitted,

FEDERAL EXPRESS CORPORATION

A handwritten signature in black ink, appearing to read "G. Bailey Leopard, Jr.", is written over a horizontal line. The signature is stylized with large, flowing loops.

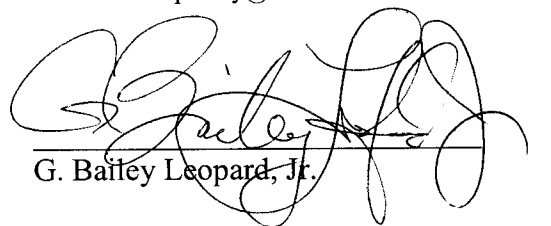
G. Bailey Leopard, Jr.
Senior Attorney
Regulatory Affairs

September 17, 2004

CERTIFICATE OF SERVICE

I hereby certify that the persons listed below were served with the Motion to Compel and Motion to Shorten Answer Period of Federal Express Corporation via e-mail this 17th day of September, 2004.

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